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**From:** [REDACTED]

**Sent:** Tuesday, August 16, 2016 5:52:37 PM

**To:** [REDACTED]

**Cc:**

**Bcc:** [REDACTED]

**Subject:** SUB pay question re "short-week benefits"

**Question:** You asked whether “short-week benefits” paid by a multiple-employer “SUB Trust” to workers who work less than [REDACTED] in the prior month are excluded from wages for purposes of FICA tax as supplemental unemployment benefits described in Revenue Ruling 90-72.

**Facts:** You stated that while the Trust summary plan description states that employees must qualify for state unemployment benefits in order to receive payments from the Trust, in fact, the employers submit to the third-party administrator a request listing all employees who worked fewer than [REDACTED] in the prior month. Most employers do not know whether the employees applied for state unemployment benefits.

**Law:** Section 3121(a) and Treasury Regulation section 31.3121(a)-1(b) provide that, for purposes of the FICA tax, all remuneration for employment is wages, unless a specific exception applies. The IRS created an administrative exception for certain payments that are designed to supplement state unemployment compensation and that are actually tied to the receipt of state unemployment benefits. This limited exception is explained in Revenue Ruling 56-249; Revenue Ruling 90-72 adds clarification regarding lump sum payments.

**Conclusion:** We agree with your conclusion that these “short-week benefits” are not excluded from wages for purposes of FICA tax because they do not satisfy the requirements set forth in Rev. Rul. 56-249 and Rev. Rul. 90-72. Your conclusion is also consistent with PLRs 200322012 and 9734035, which stated that Automatic Short Week Benefits are wages for FICA and FUTA purposes, unless the benefits are made to individuals who otherwise qualify for excludable Regular Benefits (i.e., if the Automatic Short Week Benefits immediately precede or follow a week in which an employee receives Regular Benefits).

[REDACTED]  
Internal Revenue Service  
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